

APPEAL NO. 022068
FILED SEPTEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 8, 2002, and July 17, 2002. The hearing officer determined that the appellant (claimant) had disability from _____ through June 6, 2001. On appeal, the claimant contends that the determination that disability ended on June 6, 2001, is against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance.

DECISION

We affirm as reformed.

We first note that the hearing officer's decision and order refers to an incorrect date of injury in the Statement of the Case and the Findings of Fact sections. It is noted that the correct date of injury is _____. The references in the above-described sections to the injury date as _____, and _____, respectively, are reformed to reflect the correct date of injury.

The claimant had the burden to prove that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Whether and when the claimant had disability resulting from the compensable injury is a question of fact to be determined by the hearing officer. The claimant contends that the "fact that the surgery is needed and has not taken place is what has established claimant's disability." Claimant asserts that when a claimant is expected to have surgery, "then the ability to return to work is circumvented by the fact that the claimant will be off work again because of the surgery". However, this is not the standard for proving disability. See Section 401.011(16). We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's disability determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also asserts that there was a "showing of passion, bias or prejudice which influences this hearing officer's findings". The claimant does not refer to any specific instances where these improper influences are revealed and our review of the record detects none. Accordingly, we cannot agree that the hearing officer's decision is based upon bias and prejudice, or that she improperly applied the relevant law in this case.

As reformed, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge